

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3845 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NARESH SHANKER INGALE

Versus

COMMISSIONER OF POLICE

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Appearance:

MR PJ VYAS for Petitioner

MR VB GHARANIA for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioner, a Police Constable of the Police Department, State of Gujarat, filed this petition before this Court and prayer has been made therein that the respondents be directed to continue the petitioner to perform the duty of Police Driver in M.T. Section and to pay him special allowance.

3. The facts which are necessary for disposal of this Special Civil Application, in brief, are that the petitioner was appointed as Armed Police Constable in the year 1972 in the Police Department of the State of Gujarat. Later on the petitioner was asked to perform duty of Driver in the Police motor Transport Section, which he continued to perform till 2.7.81. The petitioner passed emergency test on 25.11.73 and further passed the qualified test on 18.4.77. It is case of the petitioner that the post of Police Driver in the Motor Transport Section in the Police Department is a promotional post. It is further stated that the post of Constable is lower than that of Police Driver in the Motor Transport Section. The petitioner has been paid Rs.2/- admissible under the Gujarat Police Manual, 1975 in addition to his salary as Constable to perform duty as a Police Driver from 1973 till he passed the qualified examination on 18.4.77. It is the grievance of the petitioner that after passing the qualified test on 18.4.77, the petitioner was entitled to receive special pay of Rs.50/- p.m. which has not been given to him for the period from 19.4.77 till 2.7.81.

4. A reply to this Special Civil Application has not been filed by the respondent and as such, the averments made therein stand uncontroverted.

5. The learned counsel for the petitioner contended that discontinuation of the petitioner as a Police Driver in Motor Transport Section of the Police Department is wholly arbitrary and unjustified, moreso when it has been done without giving notice and opportunity of hearing to the petitioner. While working as a Driver, the petitioner was entitled for Rs.50/- p.m. as special allowance and as such, discontinuation of the petitioner as a Police Driver has caused him monetary loss also. It has next been contended that denial of allowance at the rate of Rs.50/- p.m. to the petitioner for the period from which the respondent has taken from him the work of Police Driver, i.e. from 1973 to 2.7.81, is wholly arbitrary and unjustified.

6. On the other hand, the learned counsel for the respondents contended that the post of Driver in the Police Department is not a promotional post as it is sought to be canvassed by the learned counsel for the petitioner. It is in fact a post which has to be held by a Police Constable so far as he is considered to be fit for discharging duties as a Driver. However, the Police Constable who are given duties of driving vehicles get

allowance. It has next been contended that the claim of the petitioner regarding special allowance for the period during which he worked as a Driver is not justified and it suffers from the defect of delay and laches.

7. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

8. The learned counsel for the petitioner is unable to show and bring on record any Rule framed under Article 309 of the Constitution of India or any other Resolution or Circular of the Government of Gujarat, whereunder it has been provided that the post of Driver in the Motor Transport Section of the Police Department is a promotional post. The learned counsel for the petitioner does not dispute that no higher pay scale has been prescribed for the post of Driver, but an incumbent thereof gets only some special allowance. So from this very fact, I have no hesitation to hold that the post of Driver in Motor Transport Section of Police Department, is not a promotional post as contended by the learned counsel for the petitioner. Only the Constable who is considered to be fit for discharging duties as a Driver in the aforesaid Section is being paid some special allowance, which does not and cannot make a post of Police Driver, a promotional post.

9. In view of this fact, the claim of the petitioner that the respondents should be directed to continue him as a Driver in the Motor Transport Section of Police Department, is devoid of any substance. This Court will not issue any writ of Mandamus to the respondents to allow the petitioner to continue to work as Police Driver in the Motor Transport Section of Police Department, as he has no right, much less a fundamental right to hold that post. The substantive post of the petitioner is of the Constable and it is not the case of the petitioner that he has been lowered down in status. Merely because the petitioner was getting or would have got some special allowance while working as a Driver will not give him any right, much less accrued right to pray for a writ of Mandamus to compel the respondents to allow him to continue as a Driver. Otherwise also, this claim of the petitioner deserves to be dismissed on another ground of delay and laches. The petitioner was discontinued to work as a Driver on 2nd July 1981 and this writ petition has been filed before this Court on 23rd July 1984, i.e. after more than three years. This unexplained delay on the part of petitioner in approaching of this Court is fatal to the petitioner and as such, the claim in the petition also deserves to be denied on this ground. So

far as the claim of the petitioner that the respondents should be directed to give him special allowance at the rate of Rs.50/- p.m. from the date he passed the qualified examination till he worked as a Driver is concerned, it is suffice to say that for this claim, it is more appropriate for the petitioner first to approach to the respondent No.1. The petitioner shall make representation in this respect to respondent No.1 within a period of one month from the date of receipt of certified copy of this order, if he so desires. In case such representation is made by the petitioner, the respondent No.1 shall decide the same within a period of three months from the date of receipt of the same. However, in case the claim of the petitioner is not acceptable, then a reasoned order may be made and in that eventuality, the petitioner, if he so desires, shall approach the respondent No.2 with all his grievances and the respondent No.2 shall decide such representation made by the petitioner within three months from the date of receipt thereof. In case the claim of the petitioner is accepted, then he shall be entitled for all consequential benefits following therefrom. This Special Civil Application is disposed of accordingly. Rule stands disposed of in aforesaid terms. No order as to costs.

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(sunil)